

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHERYL L. CARTIER,

Plaintiff,

v.

NANCY A BERRYHILL,

Defendant.

CASE NO. C17-836 RBL

ORDER

THIS MATTER is before the Court on Plaintiff Cartier's Motion for attorneys' fees and costs under the EAJA. The Commissioner argues that her position was substantially justified, and that a fee is not warranted. Cartier argues that the Commissioner's (ALJ's) underlying position was not substantially justified, making moot the question whether the Commissioner's litigation position was so justified.

The Commissioner's position was not substantially justified with respect to the ALJ's "not credible" finding—the finding that Cartier was previously able to work, despite her claimed disability—was simply wrong. Her onset date was after her prior work.

Cartier correctly cites to *Sampson v. Chater*, 103 F.3d 918, 922 (9th Cir. 1996) ("It is difficult to imagine any circumstance in which the government's decision to defend its actions in

1 court would be substantially justified, but the underlying administrative decision would not.”).

2 This Court was recently reversed for not awarding fees in a similar case, *Craig v Berryhill*, No.
3 16-36502 (June 4 2018) (“[W]here substantial evidence does not support an ALJ’s decision, it is
4 the ‘decidedly unusual case’ in which substantial justification, within the meaning of the EAJA,
5 exists.”) (citations omitted).

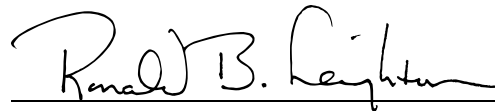
6 The Motion for EAJA fees and costs is therefore GRANTED in the amount of \$4,352.99.

7 This award is based on 22.12 hours of attorney work in 2016 at a rate of \$191.70 per hour. No
8 expenses or costs are awarded. The check for these EAJA fees shall be mailed to Plaintiff’s

9 Counsel, DEBRA J. VENHAUS at: P.O. Box 12488, Mill Creek, WA 98082

10 IT IS SO ORDERED.

11 Dated this 17th day of July, 2018.

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14 Ronald B. Leighton
15 United States District Judge
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